

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION

3 IN RE: DYNAMIC RANDOM )  
4 ACCESS MEMORY (DRAM) )  
5 ANTITRUST LITIGATION ) MDL No. 1486  
6 )  
7 **THIS DOCUMENT RELATES TO:** )  
8 ALL INDIRECT PURCHASER ACTIONS ) No. M-02-1486 PJH  
9 *State of New York v. Micron Technology et al* ) No. C-06-6436 PJH  
10 *State of California et al v. Infineon* )  
11 *Technologies AG et al* ) No. C-06-4333 PJH  
12 *State of California et al v. Samsung* )  
13 *Electronics Co., Ltd et al* ) No. \_\_\_\_\_  
14  
15  
16

17 SETTLEMENT AGREEMENT

18 This Settlement Agreement ("Agreement") is made and entered into by and between  
19 defendants Samsung Semiconductor, Inc. ("SSI") and Samsung Electronics Company Ltd.  
20 ("SEC") (collectively, "Samsung"), on the one hand, and the Settling Plaintiffs, including all  
21 indirect purchasers of DRAM, anywhere in the United States at any time during the period  
22 January 1, 1999 and continuing through December 31, 2002 (the "Complaint Period"), on the  
23 other hand. The "Settling Plaintiffs" are comprised of the Indirect Purchaser Plaintiffs and the  
24 Governmental Purchaser Plaintiffs as defined below.

25 WHEREAS, Settling Plaintiffs in these actions allege that Samsung participated in an  
26 unlawful conspiracy to raise, fix, maintain, or stabilize the price of DRAM at artificially high  
27 levels in violation of Section 1 of the Sherman Act, the California Cartwright Act, the California  
28 Unfair Competition Law, and/or the antitrust, unfair competition and/or consumer protection  
29 laws of all jurisdictions within the United States; and

30 WHEREAS, the Settling Plaintiffs are prosecuting such claims in the above-captioned  
31 actions and the action to be filed against Samsung contemporaneous with this Agreement by  
Plaintiff States, et al. (collectively, the "Action"), on their own behalf and on behalf of all

1 Indirect Purchaser and Governmental Purchaser Plaintiffs, as defined in paragraphs 1-2 below,  
2 against, among others, SSI and SEC; and

3 WHEREAS, the Settling Plaintiffs have conducted an investigation into the facts and the  
4 law regarding the Action and have concluded that their claims are valid, but nevertheless believe  
5 that resolving their claims against SSI and SEC according to the terms set forth below is in the  
6 best interest of the Plaintiffs and the indirect purchasers they represent; and

7 WHEREAS, Samsung, despite its belief that neither SSI nor SEC is liable for the claims  
8 asserted and have good defenses thereto, has nevertheless agreed to enter into this Agreement to  
9 avoid further expense, inconvenience, and the distraction of burdensome and protracted  
10 litigation, and to obtain the releases, orders, and judgment contemplated by this Agreement, and  
11 to put to rest with finality all claims that have been or could have been asserted against the  
12 Samsung Releasees, as defined below, based on the allegations of the Action, as more  
13 particularly set out below;

14 NOW, THEREFORE, in consideration of the covenants, agreements, and releases set  
15 forth herein and for other good and valuable consideration, it is agreed by and among the  
16 undersigned that the Action be settled, compromised, and dismissed on the merits with prejudice  
17 as to the Samsung Releasees, as defined below, and except as hereinafter provided, without costs  
18 as to the Plaintiffs or the Settling Plaintiffs, subject to the approval of the Court, on the following  
19 terms and conditions, and incorporating the preceding clauses:

20 A. Definitions.

21 1. For purposes of this Agreement, "Indirect Purchaser Plaintiffs" is defined as all  
22 natural persons and nongovernmental entities, who, at any time during the period from  
23 January 1, 1999 through December 31, 2002, purchased DRAM, including all products  
24 containing DRAM, anywhere in the United States indirectly from the defendants, their parents,  
25 subsidiaries and affiliates. Excluded from this definition are defendants and their parents,  
26 subsidiaries and affiliates; all governmental entities; any judicial officer presiding over the  
27 Action and the members of his/her immediate family and judicial staff; and all alleged co-  
28 conspirators.

1           2.       For purposes of this Agreement, "Governmental Purchaser Plaintiffs" is defined  
2 as all of the Plaintiff States themselves, as well as all state and local government entities in and  
3 each of them, including without limitation, state agencies and departments, public undergraduate  
4 and graduate education institutions and political subdivisions such as K-12 school districts,  
5 cities, counties, utilities and special districts, who, at any time during the Complaint Period  
6 purchased DRAM, including all products containing DRAM, anywhere in the United States  
7 directly or indirectly from the defendants, their parents, subsidiaries, and affiliates and who, as  
8 set out in the complaint filed contemporaneously with this Agreement by Plaintiff States and the  
9 complaint in *State of New York v. Micron Technology, Inc., et al.*, Case No. C-06-6436 PJH  
10 (N.D. Cal.), are represented by the Attorneys General of the Plaintiff States, to the full extent  
11 permitted by state law, acting in their sovereign or proprietary capacity, their representative or  
12 *parens patriae* capacity, or acting pursuant to Rule 23. Excluded from this definition are any  
13 judicial officers presiding over the Action and the members of his/her immediate family and  
14 judicial staff; and all federal government entities.

15           3.       "Plaintiff States" are defined as including the following States and  
16 Commonwealths: Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Hawaii,  
17 Idaho, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan,  
18 Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New  
19 York, North Carolina, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Oregon,  
20 Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia,  
21 Washington, West Virginia, and Wisconsin. Plaintiff States are represented by their respective  
22 Attorneys General. Any other state that signs this Agreement will be considered to be a Plaintiff  
23 State for purposes of this Agreement upon written notice to Samsung, and shall be bound by all  
24 terms of this Agreement.

25           4.       For purposes of this Agreement, "DRAM" is defined to mean dynamic random  
26 access memory devices and components ("DRAM"), including without limitation, synchronous  
27 dynamic random access memory ("SDRAM"), Rambus dynamic random access memory

1 ("RDRAM"), asynchronous dynamic random access memory ("ASYN") and double data rate  
2 dynamic random access memory ("DDR"), including modules containing DRAM, RDRAM,  
3 ASYN, and/or DDR. For purposes of this Agreement, "DRAM" does not include static  
4 random access memory ("SRAM") devices and components.

5 5. "Samsung Releasees" shall refer to SSI, SEC and Samsung Electronics America,  
6 Inc. ("SEA") and to all of their respective past and present, direct and indirect, parents,  
7 subsidiaries, affiliates; the predecessors, successors and assigns of any of the above; and each  
8 and all of the present and former principals, partners, officers, directors, supervisors, employees,  
9 representatives, insurers, attorneys, heirs, executors, administrators, and assigns of each of the  
10 foregoing.

11 6. "Releasors" shall refer to the Settling Plaintiffs and to their past and present  
12 officers, directors, employees, agents, stockholders, attorneys, servants, representatives,  
13 corporate parents, subsidiaries, affiliates, corporate partners, insurers and all other persons,  
14 partnerships or corporations with whom any of the former have been, or are now, affiliated, and  
15 the predecessors, successors, heirs, executives, administrators and assigns of any of the  
16 foregoing.

17 7. The "Settlement Fund" for the Indirect Purchaser Plaintiffs shall be \$80,000,000  
18 in United States funds, plus accrued interest on the deposits set forth in paragraphs 20 and 21.  
19 The "Settlement Fund" for the Governmental Purchaser Plaintiffs shall be \$10,000,000 in United  
20 States funds, plus accrued interest on the deposits set forth in paragraphs 20 and 21. The funds  
21 for the Indirect Purchaser Plaintiffs shall be referred to herein as the "Indirect Purchaser  
22 Settlement Fund," while the funds for the Governmental Purchaser Plaintiffs shall be referred to  
23 herein as the "Governmental Settlement Fund." The Indirect Purchaser Settlement Fund and the  
24 Governmental Settlement Fund shall be referred to collectively where appropriate as "The  
25 Settlement Funds."  
26

1           8.       "Co-Lead Counsel" shall refer to:

2                   Josef D. Cooper  
3                   Cooper & Kirkham, P.C.  
4                   655 Montgomery Street, 17<sup>th</sup> Floor  
5                   San Francisco, CA 94111

6  
7                   David Boies, III  
8                   Straus & Boies, LLP  
9                   4041 University Drive  
10                  5<sup>th</sup> Floor  
11                  Fairfax, VA 22030

12  
13                  Daniel E. Gustafson  
14                  Gustafson Gluek PLLC  
15                  650 Northstar East  
16                  608 Second Avenue South  
17                  Minneapolis, MN 55402

18  
19                  Daniel J. Mogin  
20                  The Mogin Law Firm, P.C.  
21                  110 Juniper Street  
22                  San Diego, CA 92101

23  
24                  Kathleen Foote  
25                  Senior Assistant Attorney General  
26                  Office of the Attorney General of California  
27                  455 Golden Gate Avenue  
28                  San Francisco, California 94102-3664

29  
30                  Blake L. Harrop  
31                  Senior Assistant Attorney General  
32                  Office of the Attorney General of Illinois  
33                  James R. Thompson Center  
34                  100 W. Randolph Street, 13<sup>th</sup> Floor  
35                  Chicago, Illinois 60601  
36  
37  
38  
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Richard L. Schwartz  
Assistant Attorney General  
Antitrust Bureau  
Office of the Attorney General of New York  
120 Broadway, 26<sup>th</sup> Floor  
New York, New York 10271

9. "Micron" shall refer to Micron Technology, Inc. and/or to Micron Semiconductor Products, Inc., a wholly owned and controlled subsidiary of Defendant Micron Technology, Inc., as well as the successors of said corporations. "Infineon" shall refer to Infineon Technologies AG, and/or Infineon Technologies North America Corp. and/or Qimonda AG, wholly owned and controlled subsidiaries of Infineon Technologies AG, as well as the successors of said corporations. "Hynix" shall refer to Hynix Semiconductor, Inc. and/or to Hynix Semiconductor America, Inc., a wholly owned and controlled subsidiary of Defendant Hynix Semiconductor, Inc., as well as the successors of said corporations.

B. Approval of this Agreement and Dismissal  
of Claims Against SSI and SEC.

10. Settling Plaintiffs and Samsung shall use their best efforts to effectuate this Agreement and its purpose, and secure the prompt, complete, and final dismissal with prejudice of the Action as to SSI, SEC and SEA, but not as to any party that is not a Samsung Releasee. The Parties agree to take whatever further steps, if any, may be necessary in this regard, including implementation of this Agreement in individual state courts.

11. Within sixty (60) days after execution of this Agreement, Settling Plaintiffs shall submit to the Court a motion for preliminary approval of this Agreement and authorization to disseminate notice of the settlement and final judgment as contemplated by this Agreement and as required by law to the Settling Plaintiffs (the "Motion"). The Motion shall include: (i) a proposed form of, method for, and date of dissemination of notice which shall be submitted to Samsung with the Motion a reasonable time before submission of the Motion so that Samsung may have an opportunity to provide input on the text of the proposed form of any notice; and (ii)

1 a proposed form of order and final judgment, the text of which shall be agreed upon by Settling  
2 Plaintiffs and Samsung before submission of the Motion. This shall be done with the  
3 understanding that any notice of the settlement shall be provided by publication and/or such  
4 other means as may be required to comply with Rule 23, according to a plan to be developed by  
5 Settling Plaintiffs, with a reasonable opportunity for Samsung to provide input, and to be  
6 approved by the Court. The costs of notice and claims administration up to a maximum of  
7 \$2,500,000 shall be paid by Samsung separate and apart from the Settlement Funds, subject to  
8 Samsung's review of appropriate documentation regarding expenditures incurred pursuant to the  
9 notice and administration plans. If Settling Plaintiffs enter into any other DRAM settlements  
10 before notice of this Agreement is given, Settling Plaintiffs agree to disseminate a single notice  
11 of all of the settlements and to apportion among the settling defendants pro rata based upon  
12 settlement amount the costs of notice and claims administration, which will in no event exceed  
13 \$2,500,000 in total for Samsung. The Motion shall recite and ask the Court to find that any  
14 notice of settlement by publication to the Settling Plaintiffs constitutes valid, due and sufficient  
15 notice, constitutes the best notice practicable under the circumstances, and complies fully with  
16 the requirements of Federal Rule of Civil Procedure 23 and/or any other applicable law. Notice  
17 to the Governmental Purchaser Plaintiffs may differ in form and substance under applicable laws  
18 from notice to the Indirect Purchaser Plaintiffs.

19 12. Settling Plaintiffs and Samsung agree that, subject to Court approval, notice of  
20 this settlement shall be directed to, among others, (1) a settlement class pursuant to FRCP 23 and  
21 applicable state laws of all natural persons and nongovernmental entities, who, at any time  
22 during the period from January 1, 1999 through December 31, 2002, purchased DRAM,  
23 including all products containing DRAM, anywhere in the United States indirectly from the  
24 defendants, their parents, subsidiaries and affiliates, and (2) the Plaintiff States and the persons  
25 and entities they represent, as set forth in the operative complaints in *State of California, et al. v.*  
26 *Infineon Technologies AG, et al.*, Case No. C 06-4333 PJH (N.D. Cal.), *State of New York v.*

1 *Micron Technology, Inc., et al.*, Case No. C-06-6436 PJH (N.D. Cal.), and the action to be filed  
2 contemporaneous with this Agreement by Plaintiff States.

3 13. Settling Plaintiffs and Samsung shall jointly seek entry of an order and final  
4 judgment, the text of which Settling Plaintiffs and Samsung shall agree upon. The terms of that  
5 order and final judgment will include, at a minimum, the substance of the following provisions  
6 that:

- 7 a. as to the Action, approving finally this settlement and its terms as being a  
8 fair, reasonable and adequate settlement as to the Settling Plaintiffs within  
9 the meaning of Rule 23 of the Federal Rules of Civil Procedure or other  
10 applicable law and directing its consummation according to its terms;
- 11 b. as to SSI, SEC and SEA, the Action be dismissed with prejudice and,  
12 except as provided for in this Agreement, without recovery of costs to  
13 Samsung;
- 14 c. reserving exclusive jurisdiction over the settlement and this Agreement,  
15 including the administration and consummation of this settlement to the  
16 United States District Court for the Northern District of California;
- 17 d. determining under Federal Rule of Civil Procedure 54(b) that there is no  
18 just reason for delay and directing that the judgment of dismissal as to SSI,  
19 SEC and SEA shall be final;
- 20 e. as to SSI and SEC, for a period of three years from the date of execution  
21 of this Agreement, enjoining and restraining SSI and SEC from engaging  
22 in any horizontal conduct that constitutes a *per se* violation of Section 1 of  
23 the Sherman Act, including, but not limited to, price fixing, market  
24 allocation and bid rigging, with respect to the sale of any DRAM product  
25 for delivery in the United States and the systematic reciprocal exchange of  
26 DRAM pricing information as alleged in *United States v. Samsung*  
27 *Electronics Corp. Ltd. et. al.*, Case No. CR05-0643 (PJH) (U.S.D.C. N.D.  
28 Cal.);
- 29 f. as to SSI, for a period of three years from the date of execution of this  
30 Agreement, requiring it to establish and maintain a program or programs  
31 for the purpose of assuring compliance with applicable antitrust and  
32 competition laws by its officers and employees. Said program or  
33 programs shall provide relevant compliance education to SSI's employees



1 and officers regarding the legal standards imposed by state and federal  
2 antitrust law, the remedies that might be applied in the event of violations  
3 of said laws, and their obligations in the event that they observe violations  
4 of said laws. On an annual basis, SSI shall certify to the Settling Plaintiffs  
5 that SSI is fully compliant with the provisions of this paragraph and  
6 submit a written report to the Settling Plaintiffs setting forth in manner and  
7 detail how SSI has complied and is complying with the provisions of this  
8 paragraph;

9 g. as to SSI and SEC, reducing the effective time periods of paragraphs (e) or  
10 (f) in the event Settling Plaintiffs reach a settlement agreement with  
11 Hynix, Infineon or Micron that imposes substantially the same injunctive  
12 relief for a shorter time period than the injunctive relief imposed by  
13 paragraphs (e) or (f). The time period for paragraph (e) shall be reduced  
14 to the shortest of the time periods imposed on Hynix, Infineon or Micron  
15 for the prohibitions of paragraph (e) and the time period for paragraph (f)  
16 shall be reduced to the shortest of the time periods imposed on Hynix,  
17 Infineon or Micron for the prohibitions of paragraph (f);

18 h. as to SSI, SEC and SEA, staying any action filed against them by Settling  
19 Plaintiffs while approval of this Agreement is pending within the meaning  
20 of paragraph 14;

21 i. Co-Lead Counsel shall file with the Clerk of the Court a record of the  
22 Settling Plaintiffs who timely excluded themselves from the settlement,  
23 shall provide a copy of the record to counsel for Samsung, and shall  
24 maintain the record for a period of five years;

25 j. certifying solely for purposes of this settlement the Class of Indirect  
26 Purchaser Plaintiffs defined above;

27 k. certifying solely for purposes of this settlement the Class of Governmental  
28 Purchaser Plaintiffs located in those States for which class allegations are  
29 made in the complaint filed contemporaneously with this Agreement by  
30 Plaintiff States;

31 l. approving the payment of \$1,000,000 in attorneys' fees for the  
32 Governmental Purchaser Plaintiffs, directing the financial institution to  
33 which such fees may be deposited and allowing Plaintiff States to allocate  
34 such fees among counsel for Governmental Purchaser Plaintiffs in a  
35 manner which they in good faith believe reflects the contributions of such  
36 counsel to the investigation, prosecution and settlement of the Action. No

1 party to this Agreement shall object to any application of attorneys' fees  
2 made pursuant to this paragraph or to the award of \$1,000,000 in  
3 attorneys' fees to the Governmental Purchaser Plaintiffs; and

- 4 m. Approving the payment of attorneys' fees for private counsel for the  
5 Indirect Purchaser Plaintiffs as determined by paragraph 27 below.  
6 No party to this Agreement shall object to any application of attorneys'  
7 fees made pursuant to this paragraph or to the award of attorneys' fees to  
8 private counsel for the Indirect Purchaser Plaintiffs in the amount  
9 determined pursuant to paragraph 27.

10 14. This Agreement shall become final when the Court has entered an order and final  
11 judgment approving this Agreement under Federal Rule of Civil Procedure 23(e) and/or  
12 applicable state laws and a final judgment dismissing the Action with prejudice as to SSI, SEC  
13 and SEA against Settling Plaintiffs and one of the following dates occurs, on such date: (i) if an  
14 appeal is taken, the date of final affirmance on appeal of the order and final judgment, the  
15 expiration of the time for a petition for or a denial of a writ of certiorari to review the order and  
16 final judgment and, if certiorari is granted, the date of final affirmance of the order and final  
17 judgment following review pursuant to that grant; or (ii) the date of final dismissal of any appeal  
18 from the order and final judgment or the final dismissal of any proceedings on certiorari to  
19 review the order and final judgment; or (iii) if no appeal is filed, the expiration date of the time  
20 for the filing or noticing of any appeal from the order and final judgment, *i.e.*, thirty (30) days  
21 after entry of the order and final judgment. This Agreement shall be deemed executed as of the  
22 last date of signature by Samsung and each of the Settling Plaintiffs. The date of execution of  
23 this Agreement shall not be extended in the event that any other state signs and agrees to be  
24 bound by this Agreement pursuant to the last sentence of paragraph 3 of this Agreement. As of  
25 the date of execution of this Agreement, Settling Plaintiffs and Samsung shall be bound by the  
26 terms of the Agreement and the Agreement shall not be rescinded except in accordance with  
27 paragraphs 23 or 28 of this Agreement.

28 15. Neither this Agreement (whether or not it should become final) nor the final  
29 judgment, nor any and all negotiations, documents and discussions associated with such

1 negotiation, shall be deemed or construed to be an admission by, or form the basis of an estoppel  
2 by a third party against, any of the Samsung Releasees, or evidence of any violation of any  
3 statute or law or of any liability or wrongdoing whatsoever by any of the Samsung Releasees, or  
4 of the truth of any of the claims or allegations contained in any complaint or any other pleading  
5 filed by Settling Plaintiffs in this Action, and evidence thereof shall not be discoverable, or used  
6 directly or indirectly, in any way, whether in this Action or in any other action or proceeding.  
7 Neither this Agreement, nor any of its terms and provisions, nor any of the negotiations or  
8 proceedings connected with it, nor any action taken to carry out this Agreement by any of the  
9 Settling Plaintiffs or Samsung shall be referred to, offered into evidence or received in evidence  
10 in any pending or future civil, criminal or administrative action or proceeding, except in a  
11 proceeding to enforce this Agreement, or to defend against the assertion of Released Claims, or  
12 as otherwise required by law.

13 C. Release, Discharge, and Covenant Not to Sue.

14 16. In addition to the effect of any final judgment entered in accordance with this  
15 Agreement, upon this Agreement becoming final as set out in paragraph 14 of this Agreement,  
16 and in consideration of payment of the Settlement Funds, the costs of notice and claims  
17 administration, and Settling Plaintiffs' attorneys' fees, as specified in paragraphs 11, 20, 24 and  
18 27 of this Agreement, and for other valuable consideration, the Samsung Releasees shall be  
19 completely released, acquitted, and forever discharged from any and all claims, demands,  
20 actions, suits, causes of action, whether class, individual, or otherwise in nature (whether or not  
21 any Settling Plaintiff has objected to the settlement or makes a claim upon or participates in the  
22 Settlement Funds, whether directly, representatively, derivatively or in any other capacity) that  
23 Releasors, or each of them, ever had, now has, or hereafter can, shall, or may have on account of,  
24 or in any way arising out of, any and all known and unknown, foreseen and unforeseen,  
25 suspected or unsuspected injuries, damages, and the consequences thereof in any way arising out  
26 of or relating in any way to any act or omission of the Samsung Releasees (or any of them)  
27 concerning the sale or pricing of DRAM products up to December 31, 2002 based on the conduct

1 alleged and causes of action asserted or that could have been asserted, in complaints filed in the  
2 Action by Settling Plaintiffs, or in any similar action filed in state court, including, without  
3 limitation, any claims arising under any federal or state antitrust, unjust enrichment, unfair  
4 competition, trade practice statutory or common law, and consumer protection law (to the extent  
5 that a consumer protection claim would be based on allegations of an antitrust or unfair  
6 competition violation) (the "Released Claims"). Releasors, shall not, after the date of this  
7 Agreement, seek to establish liability against any Samsung Releasee based, in whole or in part,  
8 upon any of the Released Claims, or conduct at issue in the Released Claims. The parties  
9 contemplate and agree that this Agreement may be pleaded as a bar to a lawsuit, and an  
10 injunction may be obtained, preventing any action from being initiated or maintained in any case  
11 sought to be prosecuted on behalf of indirect DRAM purchasers with respect to the claims  
12 released in this paragraph.

13 17. In addition to the provisions of paragraph 16 of this Agreement, Releasors hereby  
14 expressly waive and release, upon this Agreement becoming final, any and all provisions, rights,  
15 and benefits conferred by § 1542 of the California Civil Code, which states:

16 CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A  
17 GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
18 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS  
19 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
20 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY  
21 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR;

22 or by any law of any state or territory of the United States, or principle of common law, which is  
23 similar, comparable, or equivalent to § 1542 of the California Civil Code. Each Releasor may  
24 hereafter discover facts other than or different from those which he, she, or it knows or believes  
25 to be true with respect to the claims which are the subject matter of the provisions of paragraph  
26 16 of this Agreement, but each Releasor hereby expressly waives and fully, finally, and forever  
27 settles and releases, upon this Agreement becoming final, any known or unknown, suspected or  
28 unsuspected, contingent or non-contingent claim with respect to the subject matter of the

1 provisions of paragraph 16 of this Agreement, whether or not concealed or hidden, without  
2 regard to the subsequent discovery or existence of such different or additional facts.

3         18.     The release, discharge, and covenant not to sue set forth in paragraph 16 of this  
4 Agreement does not include claims by any of the Settling Plaintiffs other than the claims set  
5 forth therein and does not include other claims, such as those solely arising out of product  
6 liability or warranty claims in the ordinary course of business.

7                     D.     Cooperation

8         19.     Samsung agrees to give full, continuing and complete cooperation to Settling  
9 Plaintiffs regarding DRAM by: (a) giving full and truthful assistance in any investigation,  
10 discovery and/or trial relating to any complaint against any DRAM manufacturer; (b) giving  
11 Settling Plaintiffs all reasonably-available liability evidence relevant to any DRAM  
12 manufacturer; (c) providing a database of key documents; (d) producing in the United States  
13 relevant documents relating to sales, pricing and damages; (e) meeting and conferring on making  
14 available appropriate employees for depositions and trial, as well as providing an oral proffer of  
15 said employees' testimony upon request; (f) producing at trial, and if necessary, at multiple trials,  
16 in person, by deposition or by affidavit, whichever is legally necessary, representatives to  
17 provide truthful and complete testimony, at Samsung's expense, including the transportation of  
18 foreign witnesses to the United States; (g) making employees reasonably available for interviews  
19 by Settling Plaintiffs' counsel in the United States, at Samsung's expense; (h) providing  
20 reasonable access to all economic analyses applicable to determining the impact of the  
21 conspiracy to raise, fix, maintain, or stabilize the price of DRAM at artificially high levels, as  
22 well as allocate markets, and calculating damages, save those economic analyses exclusively  
23 prepared for, or exclusively relevant to, settlements with other entities; (i) making economic  
24 experts reasonably available for debriefing and interviewing regarding any economic analyses  
25 performed to which Settling Plaintiffs are given access pursuant to this paragraph of the  
26 Settlement Agreement; and (j) making counsel available for debriefing regarding their  
27 understanding of plaintiffs' case and evidence. Samsung further agrees to provide Settling

1 Plaintiffs all DRAM cooperation materials that have been provided to the Antitrust Division of  
2 the United States Department of Justice. Samsung acknowledges that its cooperation pursuant to  
3 this paragraph will involve the production of some attorney work-product and that such  
4 cooperation will involve Samsung's expenditure of reasonable costs. It is understood that no  
5 information or documents will be produced that were obtained from other entities exclusively  
6 through or pursuant to joint defense communications and could not have been obtained but for  
7 those joint defense communications. Any statements or representations pursuant to this  
8 cooperation provision that are not made under penalty of perjury may not be used in evidence in  
9 this Action or any other proceeding against the Samsung Releasees; however, the Settling  
10 Plaintiffs are completely free to pursue any and all investigative leads derived in any way from  
11 statements or representations made pursuant to this cooperation agreement. Furthermore, if a  
12 representative of Samsung should subsequently testify contrary to the substance of statements or  
13 representations made to the Settling Plaintiffs pursuant to this cooperation agreement, or  
14 otherwise present a position inconsistent with such statements or representations, nothing shall  
15 prevent the Settling Plaintiffs from using the substance of the statements or representations for  
16 impeachment or rebuttal purposes. Samsung shall use its best efforts to provide such  
17 cooperation which meets the needs of Settling Plaintiffs. Samsung shall begin to provide such  
18 cooperation within five (5) days after execution of this Agreement. Information supplied  
19 pursuant to this cooperation provision shall not be disclosed to any third party except (i) in any  
20 action brought by Settling Plaintiffs against DRAM manufacturers with respect to claims  
21 regarding DRAM; or (ii) with Samsung's prior written consent. The Court has the power to  
22 enforce this cooperation paragraph as appropriate. All of the foregoing provisions of this  
23 paragraph apply only to DRAM, and to no other products.

24 E. Settlement Amount

25 20. Subject to the provisions hereof, and in full, complete and final settlement of the  
26 Action as provided herein, defendant Samsung shall pay \$90,000,000 in United States funds,  
27 \$80,000,000 for the Indirect Purchaser Plaintiffs and \$10,000,000 for the Governmental

Purchaser Plaintiffs, into two escrow accounts, one for the Indirect Purchaser Plaintiffs and the other for the Governmental Purchaser Plaintiffs, to be administered in accordance with the provisions of paragraph 21 of this Agreement (the "Settlement Fund Escrow Accounts"). These amounts shall be wired into the Settlement Fund Escrow Accounts no later than ten (10) business days from the date on which the order granting the motion for preliminary approval of this Agreement is entered, together with interest on such amounts to be determined on the same basis as under 18 U.S.C. § 3612(f)(2), so that such interest shall be computed (a) daily, beginning ten (10) business days from the date of execution of this Agreement, and (b) at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the tenth business day after execution of this Agreement. In addition to, and separate and apart from, the foregoing Indirect Purchaser and Government Settlement Funds, Samsung shall pay the costs of notice and claims administration, up to a maximum of \$2,500,000, as provided in paragraphs 11 and 24 of this Agreement, subject to Samsung's review of appropriate documentation regarding expenditures incurred pursuant to the notice and administration plans. In addition to, and separate and apart from, the foregoing Indirect Purchaser and Government Settlement Funds, and the foregoing payment of costs of notice and claims administration, Samsung shall pay \$1,000,000 in United States funds as attorneys' fees for counsel for Governmental Purchaser Plaintiffs into a separate escrow account (hereinafter the "States' Fees Escrow Account") no later than ten (10) business days from the date on which the order granting the motion for preliminary approval of this Agreement is entered, together with interest on such amount at the same rate and for the same period as determined above for the funds to be deposited into the Settlement Fund Escrow Accounts. In addition to, and separate and apart from, the foregoing Indirect Purchaser and Government Settlement Funds, the foregoing payment of costs of notice and claims administration, and the foregoing payment of attorneys' fees for counsel for Governmental Purchaser Plaintiffs, Samsung shall pay attorneys' fees for private counsel for the Indirect Purchaser Plaintiffs in the amount determined as provided in paragraph 27 of this Agreement into a separate escrow account (hereinafter, the "Indirect Purchaser Plaintiffs' Fees Escrow

Account") no later than ten (10) business days from the date on which the order granting the motion for preliminary approval of this Agreement is entered or no later than ten (10) business days from the date of determination of the amount of the fees, whichever is later, together with interest at the same rate(s) as earned by the Indirect Purchaser Settlement Fund for the period beginning on the earlier of (a) ten (10) business days from the date on which the motion for preliminary approval of this Agreement is filed, or (b) ten (10) business days from the date of determination of the amount of the fees, and ending on the date that the funds are paid to the Indirect Purchaser Plaintiffs' Fees Escrow Account.

21. Escrow Account

(a) The Settlement Funds Escrow Accounts referenced in paragraph 20 will be established at a bank to be agreed by Settling Plaintiffs and Samsung as soon as practicable, with such bank serving as escrow agent(s) ("Escrow Agent(s)") subject to escrow instructions as agreed by the Parties. Such escrow accounts are to be administered under the Court's continuing supervision and control. The States' Fees Escrow Account referenced in paragraph 20 also shall be established at the same bank, with such bank serving as Escrow Agent subject to escrow instructions from Plaintiff States' Co-Lead Counsel and Samsung, such escrow also to be administered under the Court's continuing supervision and control. The States' Fees Escrow Account shall not include the attorneys' fees of private counsel for the Indirect Purchaser Plaintiffs; those fees shall be deposited into a separate Escrow Account with the Escrow Agent at a time and in a manner subject to the agreement of Indirect Purchaser Plaintiffs and Samsung. All of the following sections of this paragraph apply to this States' Fees Escrow Account (and to any future Escrow Account established for the Indirect Purchaser Plaintiffs' private counsel's attorneys' fees) in exactly the same manner as they do to the Escrow Accounts for the Settlement Funds.

(b) The Escrow Agents shall cause the funds deposited in the Escrow Accounts to be invested in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, or money market funds



1 invested substantially in such instruments, and shall reinvest any income from these instruments  
2 and the proceeds of these instruments as they mature in similar instruments at their then current  
3 market rates.

4 (c) All funds held in the Escrow Accounts shall be deemed and considered to be in  
5 custodia legis of the Court, and shall remain subject to the jurisdiction of the Court, until such  
6 time as such funds shall be distributed pursuant to this Agreement and/or further order(s) of the  
7 Court.

8 (d) Settling Plaintiffs and Samsung agree to treat the Settlement Funds as being at all  
9 times "qualified settlement funds" within the meaning of Treas. Reg. §1.468B-1. In addition, the  
10 Escrow Agent shall timely make such elections as necessary or advisable to carry out the  
11 provisions of this paragraph 21, including the "relation-back election" (as defined in Treas. Reg.  
12 §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with  
13 the procedures and requirements contained in such regulations. It shall be the responsibility of  
14 the Escrow Agents to timely and properly prepare and deliver the necessary documentation for  
15 signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

16 (e) For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and  
17 the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent for each  
18 Escrow Account. The Escrow Agents shall timely and properly file all informational and other  
19 tax returns necessary or advisable with respect to the Settlement Funds (including without  
20 limitation the returns described in Treas. Reg. §1.468B-2(k)(l)). Such returns (as well as the  
21 election described in paragraph 21(d)) shall be consistent with paragraph 21(d) and in all events  
22 shall reflect that all Taxes, as defined below (including any estimated Taxes, interest or  
23 penalties), on the income earned by the Settlement Funds shall be paid out of the Settlement  
24 Funds as provided in paragraph 21(f) hereof.

25 (f) All (i) taxes (including any estimated taxes, interest or penalties) arising with  
26 respect to the income earned by the Settlement Funds, including any taxes or tax detriments that  
27 may be imposed upon Samsung or any other Samsung Releasee with respect to any income  
28 earned by the Settlement Funds for any period during which the Settlement Funds do not qualify

1 as "qualified settlement funds" for federal or state income tax purposes ("Taxes"); and (ii)  
2 expenses and costs incurred in connection with the operation and implementation of paragraphs  
3 21(d) through 21(f) (including, without limitation, expenses of tax attorneys and/or accountants  
4 and mailing and distribution costs and expenses relating to filing (or failing to file) the returns  
5 described in this paragraph 21(g) ("Tax Expenses")), shall be paid out of the Settlement Funds.

6 (g) Neither Samsung nor any other Samsung Releasee nor their respective counsel  
7 shall have any liability or responsibility for the Taxes or the Tax Expenses. Taxes and Tax  
8 Expenses shall be timely paid by the Escrow Agents out of the Settlement Funds without prior  
9 order from the Court and the Escrow Agents shall be obligated (notwithstanding anything herein  
10 to the contrary) to withhold from distribution to any claimants authorized by the Court any funds  
11 necessary to pay such amounts including the establishment of adequate reserves for any Taxes  
12 and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg.  
13 §1.468B-2(1)(2)). Neither Samsung nor any other Samsung Releasee is responsible nor shall  
14 they have any liability therefore. Settling Plaintiffs and Samsung agree to cooperate with the  
15 Escrow Agents, each other, and their tax attorneys and accountants to the extent reasonably  
16 necessary to carry out the provisions of paragraphs 21(d) through 21(f).

17 (h) If the Agreement does not receive final Court approval, or if the Action is not  
18 certified as a class action for settlement purposes, then all amounts paid by Samsung into the  
19 Settlement Funds shall be promptly returned to Samsung from the Escrow Accounts by the  
20 Escrow Agents along with any interest accrued thereon less expenses incurred for taxes or any  
21 other expenses incurred by the Settlement Funds.

22 22. Exclusions. Co-Lead Counsel, in conjunction with the settlement administrator,  
23 shall cause copies of requests for exclusion from the Settlement Classes to be provided to  
24 counsel for Samsung as they are received. Settling Plaintiffs may not exclude themselves by  
25 filing such requests for exclusion as a group, but must in each instance individually execute such  
26 notices. No later than ten (10) days after the final date for mailing requests for exclusion, Co-  
27 Lead Counsel shall provide counsel for Samsung with a complete and final list of opt-outs. The  
28 proposed order contemplated by paragraphs 11 and 13 of this Agreement shall allow Settling

1 Plaintiffs and Samsung to seek discovery from opt-outs to obtain information sufficient to  
2 calculate opt-out DRAM purchases.

3       23.     Opt-Out Termination Rights. In the event that Samsung determines that valid and  
4 timely requests for exclusion have been made by multiple members of the Settlement Classes  
5 such that Samsung believes in good faith that there is a risk that it will be forced to defend itself  
6 in substantial litigation with respect to claims by opt-outs, Samsung, in its discretion, acting in  
7 good faith, and after meeting and conferring with Co-Lead Counsel, may elect to terminate the  
8 Agreement by serving written notice of such election on Co-Lead Counsel by facsimile and  
9 overnight courier and by filing a copy of such notice with the Court no later than the twentieth  
10 day from the day on which Samsung receives the final opt-out list. In the event that Samsung  
11 exercises its option to terminate this Agreement: (a) this Agreement shall be null and void, and  
12 shall have no force or effect and shall be without prejudice to the rights and contentions of  
13 Samsung, the Samsung Releasees, Settling Plaintiffs in this or any other litigation; and (b) the  
14 Settlement Funds paid by Samsung, plus interest thereon, shall be refunded promptly to  
15 Samsung, and the Escrow Agents shall be promptly so notified and instructed.

16       24.     Payment of Expenses

17       (a)     Samsung agrees to pay a maximum of \$2,500,000 towards any notice to the  
18 Settling Plaintiffs and claims administration costs, separately from, and in addition to, the  
19 Settlement Funds, subject to Samsung's review of appropriate documentation regarding  
20 expenditures incurred pursuant to the agreed-upon and approved notice and administration plans.  
21 The cost of any notice to the Settling Plaintiffs and claims administration are not recoverable if  
22 this settlement does not become final. Other than as set forth in this paragraph 24(a), and in  
23 paragraphs 11 and 20 of this Agreement, and except as Indirect Purchaser Plaintiffs' counsel and  
24 Samsung shall negotiate and Indirect Purchaser Plaintiffs' counsel shall apply for attorneys' fees  
25 pursuant to paragraph 27 below, neither Samsung nor any of the other Samsung Releasees under  
26 this Agreement shall be liable for any of the costs or expenses of the litigation of the Action,  
27 including, without limitation, attorneys' fees, fees and expenses of expert witnesses and

1 consultants, and costs and expenses associated with discovery, motion practice, hearings before  
2 the Court or any Special Master, appeals, trials or the negotiation of other settlements, or for  
3 class administration and costs.

4 (b) If Co-Lead Counsel enter into any other settlements on behalf of the Settling  
5 Plaintiffs before notice of this Agreement is given to the Classes, Co-Lead Counsel agree to  
6 provide a single notice to prospective class members of all of the settlements and to apportion  
7 pro rata based on settlement amount among such settling defendants the costs of notice and  
8 claims administration, subject to the above maximum for Samsung.

9 F. The Settlement Funds

10 25. Except as expressly provided in paragraphs 11, 20, 24 and 27 of this Agreement  
11 with respect to Samsung's payment of notice and claims administration costs and Settling  
12 Plaintiffs' reasonable attorneys' fees, Releasers shall look solely to the Settlement Funds for  
13 settlement and satisfaction against Releasees of all Released Claims, and shall have no other  
14 recovery against Samsung or any other Samsung Releasee.

15 26. After this Agreement becomes final within the meaning of paragraph 14, the  
16 Indirect Purchaser Settlement Fund shall be distributed in accordance with a plan to be submitted  
17 at the appropriate time by the Indirect Purchaser Plaintiffs, subject to approval by the Court. The  
18 Governmental Purchaser Settlement Fund shall be distributed in accordance with a plan to be  
19 submitted at the appropriate time by the Governmental Purchaser Plaintiffs, subject to approval  
20 by the Court. Neither Samsung nor any other Samsung Releasee under this Agreement shall  
21 have any responsibility for, or interest in, or liability whatsoever with respect to, or shall file any  
22 opposition to, the proposed or actual allocation of the Settlement Funds among Settling  
23 Plaintiffs, and/or any other person or entity who may assert some claim to the Settlement Funds.

24 27. Attorneys' Fees for Counsel for Indirect Purchaser Plaintiffs

25 (a) Following execution of this Agreement, private counsel for Indirect Purchaser  
26 Plaintiffs and Samsung shall meet and confer and attempt to negotiate in good faith an  
27 appropriate amount of attorneys' fees incurred in connection with prosecuting the Action, to be

1 paid to private counsel for the Indirect Purchaser Plaintiffs by Samsung separate from and in  
2 addition to the Indirect Purchaser Settlement Fund. If an agreement regarding such fees cannot  
3 be reached through good faith negotiations, private counsel for the Indirect Purchaser Plaintiffs  
4 and Samsung shall submit their dispute to binding arbitration in the Northern District of  
5 California in accordance with such rules and procedures as to which they shall in good faith  
6 negotiate and agree. The Arbitrator shall not have the power to modify any of the provisions of  
7 this Agreement, but the Arbitrator's decision shall be final and binding as to the reasonable  
8 amount of attorneys' fees, with no right of appeal. Private counsel for Indirect Purchaser  
9 Plaintiffs and Samsung shall use their best efforts to negotiate an appropriate amount of  
10 attorneys' fees, and if necessary, complete the arbitration contemplated by this paragraph 27(a)  
11 before the date on which the motion for preliminary approval of this Agreement is filed.

12 (b) Following agreement by the parties or a binding determination by the Arbitrator,  
13 Samsung shall deposit the fees into the Indirect Purchaser Plaintiffs' Fees Escrow Account, with  
14 accrued interest as provided in paragraphs 20 and 21, above, and private counsel for the Indirect  
15 Purchaser Plaintiffs shall submit an application to the Court (the "Fee Application") for approval  
16 of the fees agreed upon by the Parties or determined by the Arbitrator. In the event that the fees  
17 awarded by the Court (the "Fee Award") are less than the amount agreed upon by the Parties or  
18 determined by the Arbitrator, the Escrow Agent shall refund to Samsung the difference, plus  
19 interest on the difference, from the Indirect Purchaser Plaintiffs' Fee Escrow Account. After this  
20 Agreement becomes final within the meaning of paragraph 14, above, the Fee Award shall be  
21 paid to Co-Lead Counsel for the Indirect Purchaser Plaintiffs forthwith.

22 (c) The procedure for and the allowance or disallowance by the Court of the  
23 application by private counsel for the Indirect Purchaser Plaintiffs for attorneys' fees is to be  
24 considered by the Court separately from the Court's consideration of the fairness, reasonableness  
25 and adequacy of the Agreement, and any order or proceeding relating to the Fee Application or  
26 any appeal from any such order shall not operate to terminate or cancel this Agreement, or affect

1 or delay the finality of the Judgment approving the settlement. No party to this Agreement shall  
2 object to any application for attorneys' fees made pursuant to paragraph 27(b).

3 (d) Except as expressly provided in this Agreement, neither Samsung nor any other  
4 Samsung Releasee under this Agreement shall have any responsibility for, or interest in, or  
5 liability whatsoever with respect to any payment to private counsel for the Indirect Purchaser  
6 Plaintiffs of any Fee Award in the Action or with respect to any payment to counsel for  
7 Governmental Purchaser Plaintiffs of any attorneys' fees in the Action.

8 (e) Neither Samsung nor any other Samsung Releasee under this Agreement shall  
9 have any responsibility for, or interest in, or liability whatsoever with respect to the allocation  
10 among Indirect Purchaser Plaintiffs' Counsel, and/or any other person or entity who may assert  
11 some claim thereto, of any Fee Award that the Court may make in the Action, or with respect to  
12 any allocation among counsel for Governmental Purchaser Plaintiffs that the Court may leave up  
13 to the Governmental Purchaser Plaintiffs or that the Court may make in this Action.

14 F. Rescission if the Agreement is Not Approved or Final Judgment is Not Entered

15 28. If the Court refuses to approve this Agreement or any material part hereof, or if  
16 such approval is materially modified or set aside on appeal, or if the Court does not enter the  
17 final judgment provided for in paragraph 13 of this Agreement, or if the Court enters the final  
18 judgment and appellate review is sought, and on such review, such final judgment is not affirmed  
19 in its entirety, then Samsung and the Plaintiffs shall each, in their sole discretion, have the option  
20 to rescind this Agreement in its entirety. Written notice of the exercise of any such right to  
21 rescind shall be made according to the terms of this paragraph 28. A modification or reversal on  
22 appeal of any amount of the Indirect Purchaser Plaintiffs' Counsel's fees or counsel for  
23 Governmental Purchaser Plaintiffs' fees awarded by the Court shall not be deemed a  
24 modification of all or a part of the terms of this Agreement or such final judgment.

25 29. In the event that this Agreement does not become final, then this Agreement shall  
26 be of no force or effect and any and all parts of the Settlement Funds caused to be deposited in

1 the Escrow Accounts, including all attorneys' fees deposited in the States' Fees Escrow Account  
2 and the Indirect Purchaser Plaintiffs' Fee Escrow Account, and including all interest earned on  
3 such accounts, shall be returned forthwith to Samsung less only disbursements made in  
4 accordance with this Agreement. Samsung and Settling Plaintiffs expressly reserve all of their  
5 rights if the Agreement does not become final. Further, and in any event, Settling Plaintiffs and  
6 Samsung agree that this Agreement, whether or not it shall become final, and any and all  
7 negotiations, documents, and discussions associated with its negotiation, shall not be deemed or  
8 construed to be an admission or evidence of any violation of any statute or law or of any liability  
9 or wrongdoing by the Samsung Releasees, or of the truth of any of the claims or allegations  
10 contained in the complaints or any other pleadings filed by Settling Plaintiffs in the Action, and  
11 evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in  
12 the Action or in any other action or proceeding.

13         30. This Agreement shall be construed and interpreted to effectuate the intent of the  
14 Parties, which is to provide, through this Agreement, for a complete resolution of the relevant  
15 claims with respect to each Samsung Releasee as provided in this Agreement.

16         31. The Parties to this Agreement contemplate and agree that, prior to final approval  
17 of the Settlement as provided for in paragraphs 11 and 13 of this Agreement, appropriate notice  
18 (1) of the Settlement; (2) of a hearing at which the Court will consider the approval of this  
19 Settlement Agreement; and (3) that Settling Plaintiffs may be permitted to exclude themselves  
20 from the Settlement, will be given to Settling Plaintiffs.

21                     G. Miscellaneous

22         32. This Agreement does not settle or compromise any claim by Settling Plaintiffs or  
23 any member of the Indirect Purchaser or Governmental Purchaser Classes against any defendant  
24 or alleged co-conspirator other than the Samsung Releasees. All rights against such other  
25 defendants or alleged co-conspirators are specifically reserved by Settling Plaintiffs and the  
26 Indirect Purchaser and Governmental Purchaser Classes. SSI's and SEC's sales during the Class

1 Period shall not be removed from the Action, and any other defendant shall remain responsible  
2 for any liability on such sales as provided by law.

3 33. Neither this Agreement, nor any act performed or document executed pursuant to  
4 or in furtherance of this Agreement is or may be deemed to be or may be used as an admission  
5 of, or evidence of, (i) the validity of any claim or defense; or (ii) the appropriateness or  
6 inappropriateness of any class or other representational capacity whether contemporaneously  
7 with this Agreement or at any time in the future.

8 34. Except as otherwise set forth herein, this Agreement shall not affect whatever  
9 rights Releasors or any of them may have (i) to participate in or benefit from, where appropriate,  
10 any relief or other recovery as part of a settlement or judgment in any action on behalf of any  
11 direct purchasers of DRAM; (ii) to participate in or benefit from any relief or recovery as part of  
12 a judgment or settlement in this action against any other party named as a defendant (other than a  
13 Samsung Releasee); or (iii) to assert any product liability warranty, or other claims in the  
14 ordinary course of business which are not covered by the Released Claims.

15 35. The United States District Court for the Northern District of California shall retain  
16 jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall  
17 have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating  
18 to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation  
19 and agreement by Settling Plaintiffs and Samsung. This Agreement shall be construed according  
20 to the laws of the state of California without regard to its choice of law or conflict of laws  
21 principles.

22 36. This Agreement constitutes the entire, complete and integrated agreement among  
23 Settling Plaintiffs and Samsung pertaining to the settlement of the Action against SSI, SEC and  
24 SEA, and supersedes all prior and contemporaneous undertakings of Settling Plaintiffs and  
25 Samsung in connection herewith. This Agreement may not be modified or amended except in  
26 writing executed by Settling Plaintiffs and Samsung, and approved by the Court.



1           37.     This Agreement shall be binding upon, and inure to the benefit of, the successors  
2 and assigns of Settling Plaintiffs and Samsung. Without limiting the generality of the foregoing,  
3 each and every covenant and agreement made herein by Plaintiffs shall be binding upon all  
4 Classes and Releasors. The Samsung Releasees (other than SSI and SEC, which are parties  
5 hereto) are third party beneficiaries of this Agreement and are authorized to enforce its terms  
6 applicable to them.

7           38.     This Agreement may be executed in counterparts by Settling Plaintiffs and  
8 Samsung, and a facsimile signature shall be deemed an original signature for purposes of  
9 executing this Agreement.

10          39.     Neither Settling Plaintiffs nor Samsung shall be considered to be the drafters of  
11 this Agreement or any of its provisions for the purpose of any statute, case law, or rule of  
12 interpretation or construction that would or might cause any provision to be construed against the  
13 drafter of this Agreement.

14          40.     The descriptive headings of any paragraphs or sections of this Agreement are  
15 inserted for convenience only and do not constitute a part of this Agreement.

16          41.     Where this Agreement requires either party to provide notice or any other  
17 communication or document to the other, such notice shall be in writing, and such notice,  
18 communication, or document shall be provided by facsimile or letter by overnight delivery to the  
19 undersigned counsel of record for the party to whom notice is being provided.

20          42.     Each party and their counsel agree to do anything reasonably necessary to  
21 effectuate the performance of, and uphold the validity and enforceability of, this Agreement.

22          43.     Contemporaneous with the execution of this Agreement, Samsung and the  
23 Plaintiff States have entered into a separate tolling agreement applicable to the Governmental  
24 Purchaser Plaintiffs' claims, the exact terms and conditions of which are set forth in full in that  
25 agreement.

1           44. Each of the undersigned attorneys represents that he or she is fully authorized to  
2 enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval.

3 Dated: \_\_\_\_\_  
4

5 \_\_\_\_\_  
6 Josef D. Cooper  
7 Cooper & Kirkham, P.C.  
8 655 Montgomery Street, 17<sup>th</sup> Floor  
9 San Francisco, CA 94111  
10 Telephone: (415) 788-3030  
11

12 Dated: \_\_\_\_\_  
13

14 \_\_\_\_\_  
15 David Boies, III  
16 Straus & Boies, LLP  
17 4041 University Drive  
18 5<sup>th</sup> Floor  
19 Fairfax, VA 22030  
20 Telephone: (703) 764-8700  
21

22 Dated: \_\_\_\_\_  
23

24 \_\_\_\_\_  
25 Daniel E. Gustafson  
26 Gustafson Gluek PLLC  
27 650 Northstar East  
28 608 Second Avenue South  
29 Minneapolis, MN 55402  
30

31 Dated: \_\_\_\_\_  
32

33 \_\_\_\_\_  
34 Daniel J. Mogin  
35 The Mogin Law Firm, P.C.  
36 110 Juniper Street  
37 San Diego, CA 92101  
38

39 **Co-Lead Counsel and Attorneys for the**  
40 **Indirect Purchaser Plaintiffs**

1  
2  
3  
4 Dated: \_\_\_\_\_  
5

\_\_\_\_\_  
6 Samsung Semiconductor, Inc.  
7 3655 North First Street  
8 San Jose, CA 95134  
9

10 **Samsung Semiconductor, Inc.**  
11  
12  
13  
14

15 Dated: \_\_\_\_\_  
16

\_\_\_\_\_  
17 Samsung Electronics Company, Ltd.  
18 250, 2-Ga, Taepyong  
19 Jung-gu, Seoul 100-742  
20 Republic of Korea  
21

22 **Samsung Electronics Company Ltd.**  
23  
24  
25

26 Dated: \_\_\_\_\_  
27

\_\_\_\_\_  
28 Gary L. Halling  
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30 Four Embarcadero Center, 17<sup>th</sup> Floor  
31 San Francisco, CA 94111  
32 Tele: (415) 434-9100  
33

34 **Attorneys for Defendants Samsung**  
35 **Semiconductor, Inc. and Samsung Electronics**  
36 **Company, Ltd.**  
37  
38  
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40  
41

1  
2  
3 Dated: \_\_\_\_\_  
4

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12 For: Edmund G. Brown Jr.  
13 Attorney General of the State of California  
14

15 **Co-Lead Counsel and Attorneys**  
16 **for the State of California**  
17  
18  
19

20 Dated: \_\_\_\_\_  
21

\_\_\_\_\_  
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30 For: Lisa Madigan  
31 Attorney General for the State of Illinois  
32

33 **Co-Lead Counsel and Attorneys**  
34 **for the State of Illinois**  
35  
36  
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41

1  
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3 Dated: \_\_\_\_\_  
4  
5

6 Richard L. Schwartz  
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14 For: Andrew M. Cuomo  
15 Attorney General of the State of New York  
16

17 **Co-Lead Counsel and Attorneys**  
18 **for the State of New York**  
19

Date: \_\_\_\_\_

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Date: \_\_\_\_\_

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Date: \_\_\_\_\_

JOHN W. SUTHERS  
Attorney General of the State of Colorado

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Date: \_\_\_\_\_

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Date: \_\_\_\_\_

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